



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

201143027

AUG 01 2011

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**Uniform Issue List: 408.03-00**

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**Legend:**

Taxpayer A = \*\*\*\*\*  
  
Amount 1 = \*\*\*\*\*  
  
Financial Institution A = \*\*\*\*\*  
  
Financial Institution B = \*\*\*\*\*  
  
Financial Institution C = \*\*\*\*\*  
  
Fund C = \*\*\*\*\*  
  
IRA X = \*\*\*\*\*  
  
IRA Y = \*\*\*\*\*  
  
Account Z = \*\*\*\*\*

Dear \*\*\*\*\*,

This is in response to your request submitted on your behalf by your authorized representative dated \*\*\*\*\*, as supplemented by correspondence dated \*\*\*\*\* and \*\*\*\*\*, in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested.

Taxpayer A asserts that his failure to accomplish a rollover of Amount 1 within the 60-day period prescribed by section 408(d)(3) of the Code was due to an error on the part of Taxpayer A's financial advisor. Taxpayer A further represents that Amount 1 has not been used for any other purpose.

Taxpayer A decided to change his retirement investments at the behest of his financial advisor. Taxpayer A moved Amount 1 out of IRA X at Financial Institution A in order to take advantage of a loan investment opportunity through a self-directed IRA Y at Financial Institution B. Taxpayer A entrusted the transfer of Amount 1 to his financial advisor. Unbeknownst to Taxpayer A, the financial advisor and representative of Fund C took advantage of the investment opportunity with Fund C by depositing the distributed assets of IRA X directly into Fund C's Account Z with Financial Institution C, a non-IRA account, in order to purchase investment notes from Fund C directly, instead of depositing Amount 1 into IRA Y, then having IRA Y purchase the investment notes from Fund C. IRA Y was unable to accept the investment notes of Fund C and required that any assets within the self-directed IRA be purchased with funds already within the IRA. By the time Taxpayer A's financial advisor realized his error, the 60-day period to complete the tax-free rollover had expired. This transaction resulted in Taxpayer A failing to deposit the distributed Amount 1 into IRA Y within 60 days of the distribution from IRA X.

Taxpayer A's financial advisor has acknowledged, in writing, that he misunderstood the procedures for acquiring the investment notes of Fund C and placing them within a self-directed IRA.

Based on the above facts and representations, you request a ruling that the Internal Revenue Service ("Service") waive the 60-day rollover requirement with respect to Amount 1 contained in section 408(d)(3) of the Code in this instance.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines, and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if

(i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60<sup>th</sup> day after the day on which the individual receives the payment or distribution; or

(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60<sup>th</sup> day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received

any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and documentation submitted by Taxpayer A is consistent with his assertion that his failure to accomplish a timely rollover of Amount 1 was caused by an error on the part of Taxpayer A's financial advisor and the representative of Fund C, resulting in the failure to deposit Amount 1 into IRA Y within 60 days after being distributed from IRA X.

Therefore, pursuant to section 408(d)(3)(A) of the Code, the Service hereby waives the 60-day rollover requirement with respect to Amount 1 from IRA X. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount 1 into another qualified plan or rollover IRA. Provided all other requirements of section 408(d) of the Code, except the 60-day requirement, are met with respect to such contribution, Amount 1 will be considered a rollover contribution within the meaning of section 408(d) of the Code.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter ruling has been sent to your authorized representative pursuant to a power of attorney on file in this office.

If you wish to inquire about this ruling, please contact (Identification Number  
\*\*\*\*\* at (\*\*\*) \*\*\*-\*\*\*\*. Please address all correspondence to \*\*\*\*\*.

Sincerely yours,

*Carlton A. Watkins*

Carlton A. Watkins, Manager  
Employee Plans Technical Group 1